



# Indiana Department of Environmental Management

*We Protect Hoosiers and Our Environment.*

100 N. Senate Avenue • Indianapolis, IN 46204

(800) 451-6027 • (317) 232-8603 • [www.idem.IN.gov](http://www.idem.IN.gov)

Michael R. Pence  
Governor

Carol S. Comer  
Commissioner

VIA ELECTRONIC MAIL

June 29, 2016

UST Owners and Operators,  
Environmental Consultants and Contractors,  
And Other Interested Parties

To Whom It May Concern:

Re: ELTF Program Updates: Application R-14,  
SEA 255/IC13-23, and Task Description  
NPD

The Excess Liability Trust Fund (ELTF) Section offers the following updates:

- The updated, electronic ELTF application (Form 47139), revision 14, is now available for use. The form can be found at: <http://www.in.gov/idem/5157.htm>. Use of revision 14 will be required for all submittals after Friday, July 29, 2016. Any claims received after this date on an earlier version of the application will be administratively denied.
- On July 1, 2016, SEA 255 becomes effective and revises IC 13-23. Please see the following *Summary of Statutory Revisions Affecting the Excess Liability Trust Fund* for more information.
- The Non-Rule Policy Document (NPD) *ELTF Task Descriptions for Purposes of Labor Reimbursement* (Waste-0068-NPD) has been posted for final comment. Please submit all comments by August 8, 2016. More information regarding this announcement is below.

For questions regarding these updates, please contact Brian Pace at 317-232-8727 or via email at [bpace@idem.IN.gov](mailto:bpace@idem.IN.gov).

Sincerely,

Brian A. Pace, Chief  
Excess Liability Trust Fund Claims Section  
Underground Storage Tank Branch  
Office of Land Quality  
Indiana Department of Environmental Management



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### **Summary of Statutory Revisions Affecting the Excess Liability Trust Fund** (effective July 1, 2016, available at <http://iga.in.gov/legislative/2016/bills/senate/255>)

The statutes governing the Excess Liability Trust Fund (“ELTF”) at Ind. Code 13-23 underwent significant revision during the last legislative session. The purpose of these revisions was to provide clarification of the statutory scheme, while allowing broader access to the fund. ELTF eligibility for a given release is subject to the statutory scheme in place at the time the release occurred, or at the time a release is discovered if date of occurrence is unknown. Therefore, releases that occur on or after July 1, 2016, will be subject to these revisions as will those releases discovered on or after July 1, 2016, when the date of occurrence is unknown or cannot be determined. If the rules currently governing the ELTF conflict with the revised statutes, the revised statutes control. The agency is working on a draft rule to incorporate the statutory revisions.

Six new definitions were created including definitions of “Eligible party” and “Eligible release”. “Eligible party” includes current and former UST owners and operators, transferees of properties upon which a UST is located and transferees of properties upon which a UST was located, but from which the UST has been removed. “Eligible release” means the UST was registered prior to any claims being submitted, the release is reported within 30 days of discovery, an Initial Site Characterization report is submitted as required by 329 IAC 9-5-5.1, and the release is from the UST or dispensing components, not including the hose and nozzle. The concept of “substantial compliance” has been deleted from the statute.

The deductible has been reduced to a flat \$15,000. Reimbursement will be further reduced by the amount of any unpaid annual UST fees and an additional amount of \$1,000 for each annual UST fee that was not paid in the year it was due. These amounts will be subtracted from the first reimbursable claim and any subsequent reimbursable claim as necessary. The amount subtracted for unpaid UST fees does not “make up” or render those fees as “paid”; owners and operators must remit unpaid fees separately to the agency in order to avoid future reductions in reimbursement for unpaid fees.

The maximum reimbursement per eligible release increased from \$2 million to \$2.5 million, while the maximum payout to any eligible party per fiscal year was raised to \$10 million per fiscal year. If the right to receive money has been assigned, payments to any assignees will be considered payments to the assignor for purposes of the \$10 million limit. A maximum submission amount was established whereby any eligible party may only submit a total of \$10 million in claims for any fiscal year. Once that \$10 million total is reached, an eligible party may not submit any further claims that fiscal year. The final substantial revision allows for an independent actuarial study every five (5) years, with costs related thereto to be paid by the fund.

If you have any questions regarding implementation of these revisions, please contact Bobbi Steiff at 317-234-0935, [rsteiff@idem.IN.gov](mailto:rsteiff@idem.IN.gov).

This communication is not intended to provide legal advice or opinion but is for general informational purposes only.



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To all ELTF Applicants:

The Indiana Department of Environmental Management (“IDEM”) is issuing the attached Non-Rule Policy Document (“NPD”), ELTF Task Descriptions for Purposes of Labor Reimbursement, Waste-0068-NPD, in order to clarify certain requirements relating to submission and reimbursement of personnel costs through the Excess Liability Trust Fund (“ELTF”). Pursuant to 328 IAC 1-3-5(e) PERSONNEL, when submitting a claim for reimbursement of personnel costs, the applicant shall be required to give the personnel classification, task being performed, and the name of the individual performing the task. Further, rates will be paid based on the task performed by an employee rather than the qualifications of the employee.

There are eight (8) personnel classifications specified by the ELTF rule. Certain activity categories are specified in 328 IAC 1-3-5(f) for seven (7) of these personnel classifications. While specifying the activity category does provide some useful information, often more information is necessary to describe exactly what task was performed and why in order to demonstrate the costs are reasonable and cost effective.

IDEM has the authority to deny reimbursement on the basis that more information is needed to show personnel related costs are reasonable and cost effective. IDEM is issuing this NPD to assist applicants in preparing their claims with sufficient information in an attempt to avoid such denials.

This draft NPD may be found on the following website as well:  
[www.IN.gov/idem/4694.htm](http://www.IN.gov/idem/4694.htm).

The formal comment period for this NPD runs through August 8, 2016.

**This NPD will become effective thirty (30) days after it is presented to the Financial Assurance Board (“FAB”) in accordance with Ind. Code 13-14-1-11.5.**

The next scheduled FAB meeting is set for August 11, 2016. As such, this NPD should become **effective September 12, 2016**.

If you have any questions, please contact Brian Pace at (317) 232-8727 [bp@idem.IN.gov](mailto:bp@idem.IN.gov) or Bobbi Steiff at (317) 234-0935 [rsteiff@idem.IN.gov](mailto:rsteiff@idem.IN.gov).